

ORIGINAL
FILED IN CLERK'S OFFICE
U.S. DISTRICT COURT
U.S. DISTRICT COURT
DECEMBER 01 2003
JAMES D. THOMAS, Clerk
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

IN RE: TRI-STATE
CREMATORY LITIGATION : MDL DOCKET NO. 1467

**CAGLE FUNERAL HOME'S STATEMENT OF
MATERIAL FACTS AS TO WHICH THERE IS
NO GENUINE ISSUE FOR TRIAL**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56.1(B)(2) for the United States District Court for the Northern District of Georgia, the Defendant Cagle Funeral Home submits the following statement of material facts to which it contends that there is no genuine issue to be tried, as follows:

1.

Cagle Funeral Home ("Cagle") is a third generation family business in Jasper, Georgia. David Cagle's Deposition ("Cagle Depo.", pp. 3-6).

2.

The funeral home was and currently is owned and operated by Robert A. Cagle and his son David Cagle. (See Cagle Depo.)

3.

Robert A. Cagle, Luke Wigington and Lonnie Waters, employees of Cagle, are licensed funeral directors in the state of Georgia. (Cagle Depo, p. 6-8.).

4.

Ray Marsh and Cagle had a long-standing and successful working relationship which began when the funeral home utilized the grave opening and closing services owned and operated by Ray Marsh.

5.

In 1982, Ray Marsh contacted Robert Cagle and informed him he was installing a crematory on his property, and suggested that he use his crematory in Noble, Georgia. (Cagle Depo., p. 12-16.)

6.

From 1982 through 1997, Cagle used Tri-State. From 1982 to 1997, Cagle sent approximately 30-40 bodies to Tri-State for cremation.

7.

During this fifteen (15) year period, Lonnie Waters personally visited the Tri-

State property to deliver a body for cremation and/or to pick up cremated remains; arrangements were also made for a Tri-State representative to pick up bodies and deliver cremains. (Cagle Depo. at p. 19-22, 34.)

8.

Plaintiff Brent Elder retained Cagle to handle the funeral arrangements for his wife from his first marriage, who died on March 29, 1989.

9.

With regard to the arrangements for his wife, Plaintiff Elder coordinated with Cagle for his wife's funeral service and cremation. (Plaintiff Elder's Depo., p. 20-23.)

10.

Plaintiff Elder executed an authorization for cremation (*Id.*).

11.

Plaintiff Elder also signed the funeral services and cremation contract, and signed the check for payment of his wife's arrangements. (*Id.*)

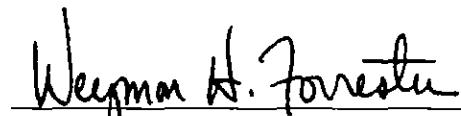
12.

Plaintiff Elder scattered his wife's ashes in the North Georgia Mountains, approximately 2 days after receiving them from Cagle. (Plaintiff Elder's Depo., p. 27).

13.

The body of Plaintiff Elder's wife has not been located at the Tri-State crematory; no conclusive tests had been performed on her ashes prior to scattering them in the North Georgia mountains. (Plaintiff Elder's Depo., p. 27, 49).

Respectfully Submitted, this 26th day of November, 2003.



WEYMON H. FORRESTER (signed with express permission by J. Anderson Davis)
State Bar. No.: 269700
FORRESTER & BRIM
P.O. Box 1688
Gainesville, GA 30503-1688
(770) 531-0800

Charles B. Zirkle, Jr.

CHARLES B. ZIRKLE, JR. (signed with
express permission by J. Anderson Davis)
State Bar No.: 785975
ZIRKLE & HOFFMAN, LLP
Five Concourse Parkway, Suite 2900
Atlanta, Georgia 30328
(770) 551-8700

Attorneys for Defendant Cagle Funeral Home

BRINSON, ASKEW, BERRY, SEIGLER,
RICHARDSON & DAVIS, LLP

By: Robert M. Brinson (by pos)
Robert M. Brinson
State Bar No. 082900

The Omberg House
615 West First Street
Post Office Box 5513
Rome, GA 30162-5513
(706) 291-8853

J. Anderson Davis
J. Anderson Davis
State Bar No. 211077

Lead and Liaison Counsel for Defendant
Funeral Homes

CERTIFICATE OF SERVICE

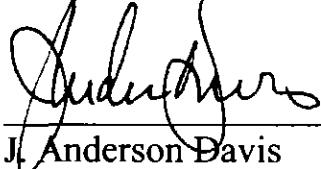
This is to certify that I have this day served a copy of the within and foregoing
CAGLE FUNERAL HOME'S STATEMENT OF MATERIAL FACTS AS TO
WHICH THERE IS NO GENUINE ISSUE FOR TRIAL upon all parties by
depositing same in the United States mail in a properly-addressed envelope with
adequate postage thereon to:

Robert H. Smalley, III, Esq.
McCAMY, PHILLIPS, TUGGLE
& FORDHAM, LLP
Post Office Box 1105
Dalton, GA 30720-1105
Liaison for Plaintiffs

McCracken Poston, Jr., Esq.
OFFICE McCRAKEN POSTON
Post Office Box 1130
Ringgold, GA 30736
Liaison/Lead Counsel for Tri-State

Frank E. Jenkins, III, Esq.
JENKINS & OLSON
15 Public Square, South
Cartersville, GA 30120-3350
Jenkins, III, Esq. and the Marsh Family

This 26th day of November, 2003.



J. Anderson Davis
State Bar No. 211077

Lead and Liaison Counsel for
Defendant Funeral Homes

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LUTHER B. COOPER
By *[Signature]* Deputy Clerk A

IN RE: TRI-STATE
CREMATORIAL LITIGATION : MDL DOCKET NO. 1467

CERTIFICATE OF COMPLIANCE

COMES NOW Cagle Funeral Home, Defendant in the above-styled civil action, and hereby files its separate and concise Statement of Material Facts As To Which There Is No Genuine Issue for Trial, pursuant to Fed. R. Civ. P. 56 and Local Rule 56.1(b)(2) from the Local Rules of Court for the United States District Court for the Northern District of Georgia. Defendant certifies that it has complied with the drafting of its Motions for Summary Judgment and relative pleadings in font Times New Roman at 14 pt.

Respectfully submitted this 26th day of November, 2003.

Weymon H. Forrester

WEYMON H. FORRESTER (signed with
express permission by J. Anderson Davis)
State Bar #269700
FORRESTER & BRIM
P. O. Box 1688
Gainesville, GA 30503-1688
(770) 531-0800

Charles B. Zirkle, Jr.

CHARLES B. ZIRKLE, JR. (signed with
express permission by J. Anderson Davis)
State Bar #785975
Zirkle & Hoffman, LLP
Five Concourse Parkway
Suite 2900
Atlanta, Georgia 30328
(770) 551-8700

ATTORNEYS FOR DEFENDANT
Cagle FUNERAL HOME

BRINSON, ASKEW, BERRY, SEIGLER,
RICHARDSON & DAVIS, LLP

By: Robert M. Brinson (by sig)
Robert M. Brinson

Georgia Bar No. 082900

By: J. Anderson Davis
J. Anderson Davis
Georgia Bar No. 211077

Lead and Liaison Counsel for Defendant
Funeral Homes

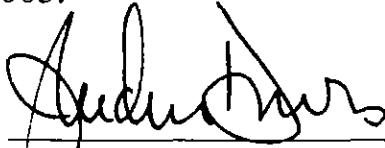
CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for all parties with a copy of the within and foregoing **Cagle Funeral Home's Certificate of Compliance** by causing a copy of same to be placed in first class U.S. mail with adequate postage affixed thereto and addressed as follows:

Robert H. Smalley, III, Esquire
McCAMY, PHILLIPS, TUGGLE & FORDHAM, LLP
Post Office Box 1105
Dalton, GA 30720-1105
Liaison for Plaintiffs

McCracken Poston, Jr., Esquire OFFICE McCACKEN POSTON Post Office Box 1130 Ringgold, GA 30736 Liaison/Lead Counsel for Tri-State Crematory, Inc. and the Marsh Family	Frank E. Jenkins, III, Esquire JENKINS & OLSON 15 Public Square, South Cartersville, GA 30120-3350
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This 26th day of November 2003.



J. Anderson Davis
Georgia Bar No. 211077

Lead and Liaison Counsel for Defendant
Funeral Homes